

groups he has never heard anyone question Richards' truthfulness or make any negative comments about his actions or conversation. (Richards Ex. R19, p. 1.)

66. Mr. Shannon said Richards is a generous and considerate man. Because Richards was aware that Mr. Shannon lives on a fixed income, he installed his antenna for a minimal charge. He also frequently shares the produce of his farm with others. (Id.)

67. Mr. Shannon said he lives in a community where many, if not most, are retired and are church goers. He would like to keep the Station on the air. He asked the Commission to consider this when it makes its decision. (Id. at p. 2.)

(18) Norman Wicker

68. Norman Wicker is a resident of Sierra Vista, Arizona. He has known Richards for the past ten years. His wife and he were Richards' close neighbors at one time and took care of his property during his absence. (Richards Ex. R20, p. 1.)

69. Mr. Wicker has found Richards to be a man of his word and of high moral standards and approved by various groups in the community. (Id. at pp. 1-2.) Richards has good standing with the local chapter of the Full Gospel Businessmen's Association and the local church which he attends regularly. (Id. at p. 2.)

(19) Buck Parker Wood

70. Buck Parker Wood is a welder for the Phelps Dodge Copper Corporation in Bisbee, Arizona. He has known and done

welding work for Richards and at his farm in the Hereford area off and on for over 15 years. He said Richards has always been honest to do business with. (Richards Ex. R21, p. 1.)

71. Mr. Wood said in the past he has entrusted tools and equipment to Richards for his efforts in growing good vegetables for the community. He urged the Commission to renew the Station's license notwithstanding Richards' conviction. (Id. at pp. 1-2.)

(20) William Brent Nicola

72. William Brent Nicola is a resident of Huachuca City, Arizona, and is a minister. He has known Richards for approximately one and one-half years. During this time Richards has been a member of his congregation. (Richards Ex. R22, p. 1.)

73. As Richards' friend and pastor, Reverend Nicola has watched Richards grow as an individual and as a valuable contributor to his church and community. He testified that Richards has consistently demonstrated a willingness to "walk in truth" and be a help to the less fortunate. (Id.)

(21) Greg D. Rowles

74. Greg D. Rowles is a resident of Sierra Vista, Arizona, and is a software engineer. He has known Richards for approximately three years. He and Richards are members of the Full Gospel Businessmen's Fellowship. Mr. Rowles said Richards is a respected member who often speaks at the monthly breakfast and banquet meetings. He keeps members informed on the status of

the Station, business related to it and number of listeners.

(Richards Ex. R23, p. 1.)

75. In his dealings with Richards over the last three years, Mr. Rowles said he can speak highly of Richards' character. Richards is concerned about the well-being of others. He is thoughtful and helpful to anyone in need and he always has a kind word to say. Richards is thrilled to have the Station on the air. He speaks of the impact it has on helping the community to grow. Richards cites his past mistakes with marijuana as an example of how TBN and the Lord have helped him grow. Richards frequently hears from many people who sincerely thank him for offering his service to the community. Mr. Rowles has had many discussions with Richards on the morals and values of the country. Richards as well as all of the Full Gospel members and many others in the community share the view that our country is deteriorating and that we need to do our best to bring about change. (Id.)

76. Mr. Rowles and members of the Full Gospel Businessmen's Fellowship often speak of Richards. He is seen as a person one can trust and rely on. Richards is a hard worker, helpful, caring and supportive of others. He wants to serve his community in a positive way. Mr. Rowles said that Richards and his Station are a positive influence on the community. (Id. at pp. 2-3.)

(22) Wayne E. Rudell

77. Wayne E. Rudell is a resident of Huachuca City, Arizona, and is retired from the United States Army. He currently works at the U.S. Arm Test Measurement Diagnostic Center at Fort Huachuca and teaches part-time at a college in the Electronics Division. Mr. Rudell has known Richards since approximately 1985 from the Abundant Life Family Church and Full Gospel Businessmen's Fellowship International. He has seen Richards in his up times and his down times. (Richards Ex. R24, p. 1.)

78. Mr. Rudell made the following comments about Richards' truthfulness. Mr. Rudell has seen the hard times in Richards' marriage, his struggles in finding work and making his business prosper. He said Richards has always been honest in admitting his wrongs to him. Richards never proclaimed to be someone that he was not. He has always been solid in his friendship. When Richards was growing the marijuana plants, he was up front with Mr. Rudell. Mr. Rudell did not agree with everything Richards did, but in all things Richards' integrity was intact. (Id. at p. 2.)

79. Mr. Rudell is the President of the Sierra Vista Chapter of the Full Gospel Businessmen's Fellowship International. Richards has been an upright member for over two and one-half years. Mr. Rudell has heard from approximately 50 people in the community as to how Richards has provided free installation of antennas, cables and amplifiers. According to

Mr. Rudell, the price to set up a complete system is approximately \$200. Mr. Rudell is active in the installation himself and checked out the quoted price. He found that Richards' price was less than the market price. (Id.)

80. Mr. Rudell had heard many people say that Richards has a high reputation in the community. People have said that they like dealing with Richards because of his honesty. (Id.)

(23) Lawrence H. Wicke

81. Lawrence H. Wicke is a resident of Hereford, Arizona, and is a retired federal firefighter. He has known Richards for approximately 17 years. He first met Richards at the Palominas Community Church which he attended regularly. Mr. Wicke said Richards is a hard-working man and developed a very productive farm in lower Montezuma Canyon. (Richards Ex. R25, pp. 1-2.)

82. Mr. Wicke testified that Richards has always demonstrated his desire to understand and live his life according to the Bible and Jesus. He has always been a blessing to the community by providing food to those in need and helping those who are elderly and disabled. Richards is extremely proficient in many vocations. His expertise is in organic farming and health and healing through food, herbs and natural methods. According to Mr. Wicke, Richards believed that marijuana had a purpose in the natural scheme and he used it accordingly. Richards told Mr. Wicke he has not used marijuana for one and one-half years and that he has come to understand that while

nothing created by God is apparently evil or wrong, that any act that violates the law is always wrong. According to Mr. Wicke, Richards is not unlike any person who is striving to live a good, wholesome life and who struggles with evil. Mr. Wicke testified that while Richards has not always been honest about everything, as honesty relates to marijuana and the law, he has always been honest in his dealings with Mr. Wicke and others in the community and in the church. Richards has repented his transgression of the law and has allowed God to use the ordeal of being arrested and losing his ranch to increase his zeal to proclaim the love, mercy and forgiveness of God to his fellow man. (Id. at pp. 1-2.)

83. Richards has demonstrated his honesty and concern for the community by his dedication and hard work in establishing the Station, which serves a large rural area as well as Sierra Vista. (Id. at p. 2.)

84. Mr. Wicke testified that it is common knowledge in a situation such as this that relatively few people will take the time to write a letter or make a statement. He said, however, that to anyone who is unbiased it is obvious that Richards is providing a good service for the area. (Id.) He urged the Commission to renew the Station's license, saying that he is a native of the area and knows he is speaking for hundreds of people who agree with his plea. (Id. at p. 3.)

(24) Stanley C. Williams


85. Stanley C. Williams is a resident of Sierra Vista and is a retired member of the military. He has known Richards for approximately four years through the Full Gospel Businessmen's Fellowship International, Sierra Vista Chapter. (Richards Ex. R26, p. 1.)

86. Mr. Williams testified that Richards' reputation among the members of the Full Gospel Businessmen's Fellowship International, Sierra Vista Chapter, is that of a truthful and trustworthy person. He is thankful to God for using Richards to provide a vital service to the Christian community. Mr. Williams urged the Commission to permit Richards to continue operating the Station. (Id.)

(25) Twila J. Thompson

87. Twila J. Thompson is a resident of Tucson, Arizona, and works as an Assistant Inspector General, U.S. Army Information Systems Command, Office of the Inspector General, Fort Huachuca, Arizona. (Richards Ex. R29, p. 1.)

88. Ms. Thompson has known Richards since approximately June 1992. She met him at the Full Gospel Businessmens' meetings in Sierra Vista, Arizona. At that time Richards was almost singlehandedly building a Trinity Broadcasting Network television tower on Mule Mountain near Bisbee, Arizona. Richards was giving the group construction progress reports at its meetings. Because he was attempting to establish a service that



— said there could have been a propensity to attempt to manipulate  
— people into giving him money or help. Richards never did this;  
— all he asked for was prayer. Ms. Thompson also hired Richards to  
— put television antennas on her homes in Sierra Vista and then in  
— Tucson. He did an excellent job at a modest price. Ms. Thompson  
— stressed that Richards was dependable and a very hard worker. In  
— addition to talking to him at the above-mentioned meetings, Ms.  
— Thompson, along with the Fort Huachuca Command Post Chaplain and  
— his wife, shared his company during Thanksgiving 1992. Profes-  
— sionally and socially, Ms. Thompson has noted that Richards'  
— focus has been directed to furthering the gospel of Jesus Christ.  
— She said Richards wants not only to get TBN television coverage  
— in the local area, but also to establish a counselling center for  
— people to receive personal prayer and assistance. (Id.)

— 89. When Ms. Thompson initially heard the charges  
— against Richards she was dumbfounded. She said he does not in  
— any way fit this profile. She based this comment on her  
— experience of 11 years as an Inspector General, and her  
— experience in the prison ministry. (She has been affiliated with  
— the prison ministry in various prisons throughout Arizona for the  
— last ten years.) Ms. Thompson said she is well acquainted with  
— the baser element of our society, and Richards certainly does not  
— fit the pattern. (Id.)

— 90. Ms. Thompson thinks Richards' track record during  
— the last eighteen months speaks for itself. There is no doubt in  
— her mind that his greatest desire is to help others by spreading



the gospel. She would not have testified on his behalf otherwise. (Id. at p. 2.)

#### IV. CONCLUSIONS OF LAW

91. Richards' Renewal Application was designated for hearing based upon the Commission's Public Notice of September 29, 1989, Commission Clarifies Policies Regarding Licensee Participation in Drug Trafficking, 4 FCC Rcd 7533 (the "Public Notice"). Therein, the Commission noted that eradicating illicit trafficking in narcotics, drugs and other controlled substances is a major federal public policy priority. Noting that it regards drug trafficking as a matter of the gravest concern, the Commission stated its intention, absent extenuating or mitigating circumstances, to take all appropriate steps, including initiating revocation proceedings, with respect to licensees convicted of drug trafficking. Id.

92. The Commission subsequently amplified its concern stating:

Felonious drug trafficking, which involves systematic devotion to a criminal enterprise, has produced according to the President of the United States, "the gravest domestic threat facing our nation today." Indeed, recent legislation permits judicial denial of federal benefits to persons convicted of drug offenses. We think it is within the category of 'egregious' non-FCC offenses entailing such callous disregard for the welfare of fellow citizens as to place at issue the perpetrators' qualifications to be or remain a broadcaster. A doubt certainly exists as to whether someone recently found guilty of such an egregious crime against society would faithfully serve the public in exercise of the vast and

important discretion that this agency entrusts to  
licensed broadcasters. [Footnotes omitted.]

Williamsburg County Broadcasting Corp., 5 FCC Rcd 3034, 3035  
[1990].

A. **Richards' Conviction, Standing Alone, Does Not Present  
a Prima Facie Case for Denial of the Renewal  
Application.**

93. Put simply, the conduct underlying Richards' conviction does not involve a "systematic devotion to a criminal enterprise" or reflect a "callous disregard for the welfare of fellow citizens." Nor does it amount to "an egregious crime against society." In fact, it is a stretch to label his conduct as "drug trafficking" at all. Richards grew marijuana for his personal use and agreed to grow a friend's marijuana plants and return them to him at maturity. Only in the most technical of senses does Richards' agreement with his friend constitute an agreement to "distribute" marijuana. The Commission should not, under the guise of its drug policy, simply label Richards a "drug trafficker" and deny renewal. The Commission must analyze the facts underlying the conviction to determine whether they are of the egregious nature warranting the ultimate sanction of disqualification. An examination of these facts makes it clear that Richards remains qualified to be a Commission licensee.

1. **The Statutory Framework**

94. In order to assess the seriousness of Richards' misconduct, it is necessary to review briefly the federal statutory framework applicable to drug-related transgressions. Section 841(a) of Title 21 of the United States Code provides that it is

illegal to possess with intent to distribute a controlled substance, including marijuana. Distribution is defined broadly to include any transfer, whether or not for profit. See, e.g., U.S. v. Ramirez, 608 F.2d 1261, 1264 (9th Cir. 1979). The penalties for violation of Section 841(a) are set forth in Section 841(b). For first time offenders, possession with an intent to distribute (i) defined amounts of such drugs as heroin, cocaine, phencyclidine (PCP), lysergic acid diethylamide (LSD), including 1,000 or more marijuana plants, calls for a mandatory minimum sentence of 10 years and maximum life imprisonment [Subsection (b)(1)(A)]; and (ii) lesser amounts of such drugs, including 100 or more marijuana plants, calls for a mandatory minimum sentence of five years and a maximum of 40 years [Subsection (b)(1)(B)]. In contrast, for first time offenders there is no mandatory minimum sentence for possession with an intent to distribute less than 50 marijuana plants and there is a maximum sentence of five years [Subsection (b)(1)(D)]. Significantly, Subsection (b)(4) provides that any person who violates Subsection (b)(1)(D) -- less than 50 marijuana plants -- "by distributing a small amount of marijuana for no remuneration" shall be guilty of a misdemeanor punishable by no more than one

year in prison -- the same penalty as for simple possession.<sup>5/</sup>  
(Emphasis added.)

95. The rationale for treating possession of less than 50 marijuana plants more leniently than possession of 50 or more plants is as follows:

... Congress wanted to focus on major drug traffickers and it selected the 50-plant cutoff because it felt that at the 50-plant level the defendant was likely operating as a trafficker in illegal drugs. [Emphasis added.]

U.S. v. Webb, 945 F.2d 967 (7th Cir. 1991), cert. denied, 117 L.Ed. 2d 463, 112 S.Ct. 1228. In other words, persons growing fewer than 50 marijuana plants are basically not considered "drug traffickers" by Congress. See U.S. v. Osborne, 955 F.2d 1500, 1508 (11th Cir. 1992) , cert. denied, 121 L.Ed. 2d 160, 113 S.Ct. 223) (more lenient treatment reflects Congressional belief "that growing a large number of plants (capable of large scale distribution) is an exponentially more serious offense than the growing of a small number"); U.S. v. Holmes, 961 F.2d 599, 602 (6th Cir. 1992), cert. denied, 121 L.Ed. 2d 168, 113 S.Ct. 232 ("... the 50-plant cutoff is simply a legislative judgment that individuals cultivating 50 or more plants are likely to be major drug dealers

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<sup>5/</sup> Similarly, some States have made the legislative judgment that possession of marijuana with an intent to distribute but not for profit is only a misdemeanor. For example, Section 18.2-248.1(a)(3) of the Virginia Code treats possession of marijuana with an intent to distribute as a misdemeanor if done "only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or to depend upon such marijuana ... ."

and, hence, a bigger threat to society than those who grow fewer marijuana plants").

## **2. Richards' Conviction**

96. Based upon the foregoing statutory framework and the cases construing it, Richards' conduct can not fairly be termed "drug trafficking" (see U.S. v. Webb, supra), a term never defined by the Commission in the Public Notice. Even if hyper-technically characterized as such, it is clear as a matter of law that, on a drug trafficking scale of one to ten, Richards' crime would rate a "minus one" in terms of seriousness.

97. The de minimus nature of Richards' crime is also evidenced by his sentence. While eligible for up to five years in prison, Richards received seven months' house arrest and five years' probation. If he were the danger to society targeted by the Commission's drug policy, he would have served significant time. Moreover, the additional weapon in the district court's arsenal -- deprivation of federal benefits -- was not invoked against Richards. (Fdgs., para. 16.)

## **3. The Criteria for Disqualification**

98. The Commission's criteria for assessing the qualifications of applicants and licensees are set forth in its Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986), recon. denied, 1 FCC Rcd 421 (1986), modified, 5 FCC Rcd 3252 (1990), recon granted, 7 FCC Rcd 6564 (1992) ("Character Policy Statement"). In the Character Policy Statement, the Commission noted that it might consider

information that a person has engaged in nonbroadcast misconduct as prima facie evidence that such person lacks the requisite traits of reliability and/or truthfulness if the misconduct is "so egregious as to shock the conscience and evoke almost universal disapprobation." Id. at 1205 n.60. The Public Notice did not in any way change the tenets of the Character Policy Statement; it "merely clarified that the pre-existing policy of considering egregious nonbroadcast misconduct encompassed drug trafficking." South Carolina Radio Fellowship, 6 FCC Rcd 4823 (1991).

99. The Commission applied the precepts of the Public Notice and the Character Policy Statement in Williamsburg County Broadcasting Corp., supra. A comparison of that case to the instant situation is instructive. In Williamsburg, the Commission revoked the license of a broadcaster whose controlling principal had been convicted of possessing cocaine with intent to distribute and of conspiring to commit that offense and had been sentenced to five years in prison. The statutory provisions violated included 21 U.S.C. Section 841(b)(1)(A)(ii) which applies to the intended distribution of 5 kilograms or more of cocaine. South Carolina Radio Fellowship, 6 FCC Rcd 340, 341 (ALJ 1991). This same provision applies to the intended distribution of 1,000 or more marijuana plants. The principal admitted to selling and attempting to sell drugs for eight or

nine months, including through the use of his broadcast facilities. Id.<sup>6/</sup>

100. Richards' conduct pales in comparison to the principal's in Williamsburg. Richards was growing 38 marijuana plants, only 19 of which were usable. The principal in Williamsburg was convicted of possessing with the intent to distribute the equivalent of at least 1,000 marijuana plants. Richards was growing the plants for his personal use and to return some of them to a friend; the Williamsburg principal admitted to selling cocaine to others for a profit. The Williamsburg principal was sentenced to five years in prison; Richards received supervised probation and seven months house arrest. Williamsburg presents a classic case of preying on fellow citizens through drug trafficking, the specific evil targeted by the Public Notice. Richards' case does not.

101. In sum, Richards conviction, standing alone and without any consideration of mitigating factors, does not warrant his disqualification to be a Commission licensee.

**B. There are Also Mitigating Factors Which Compel Renewal.**

102. When a felony conviction presents a prima facie case for disqualification, the Character Policy Statement permits a

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<sup>6/</sup> The principal also admitted that he had twice bribed a law enforcement official to further his drug trafficking efforts and had deliberately misrepresented a fact in a petition to a judge to reduce his prison sentence. The Commission held these activities had a material bearing on the principal's propensity to be candid in communications with the Commission and to obey its rules and policies. South Carolina Radio Fellowship, 6 FCC Rcd at 4824.

licensee to present evidence of mitigating circumstances or rehabilitation to demonstrate renewal is warranted notwithstanding the conviction. See Character Policy Statement, 102 FCC 2d at 1228; RKO General, Inc (WAXY-FM), 5 FCC Rcd 642, 644 (1990); and South Carolina Radio Fellowship, 6 FCC Rcd at 4824. Permissible mitigating evidence includes the frequency, recency and seriousness of the misconduct. Rehabilitation can be demonstrated by a showing that the applicant (i) has not been involved in any significant wrongdoing since the misconduct in question, (ii) enjoys a reputation for good character in his community and (iii) has operated his broadcast facility in compliance with the Commission's rules. Character Policy Statement, supra, and RKO General, Inc. (WAXY), supra.

103. The record contains ample evidence of mitigation and rehabilitation. Richards' misconduct was a one-time occurrence. As "drug trafficking" crimes go, it was "exponentially" less serious than most. Richards has not been involved in any wrongdoing since December 31, 1991. His low power television station has not been cited for any FCC violations. Twenty-five members of the Sierra Vista community, all of whom had knowledge of his marijuana offense, unequivocally testified as to Richards' good character and outstanding reputation in the Sierra Vista community for truthfulness and honesty.

104. Given the presence of these mitigating factors, and the borderline nature of the misconduct, the Renewal Application must be granted. Compare Williamsburg, supra (revocation of license



**CERTIFICATE OF SERVICE**

I certify that the foregoing Richard Richards Proposed Findings of Fact and Conclusions of Law was served on the 26th day of April, 1994, by hand delivery to the following:

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\_\_\_\_\_  
Christy R. Tavitas

in view of serious misconduct and absence of mitigating evidence).

Respectfully submitted,

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